

- (1) three shall be appointed for terms of one year;
- (2) three shall be appointed for terms of two years; and
- (3) three shall be appointed for terms of four years;

as designated by the President at the time of appointment.

(c) Membership continuation

If any member of the Commission who was appointed to the Commission under paragraphs (1) through (5)¹ as an officer designated under such paragraphs leaves such office, such member may continue as a member of the Commission for not longer than the thirty-day period beginning on the date he leaves that office.

(d) Vacancies

(1) Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members may be reappointed.

(e) Quorum

Six members of the Commission shall constitute a quorum.

(f) Voting

The Commission shall act by affirmative majority vote.

(g) Officers

The Commission shall elect a chairman and other officers from among its members to serve for terms established by the Commission.

(h) Meetings

The Commission shall meet at the call of the chairman or a majority of its members, but not less than two times each year. The headquarters of the Commission shall be at Wilberforce, Ohio, and the Commission shall conduct its meetings in such city unless circumstances otherwise require.

(i) Seal; bylaws; rules and regulations

The Commission may adopt an official seal which shall be judicially noticed and may make such bylaws, rules, and regulations as it considers necessary to carry out its functions under this chapter.

(j) Compensation

Members of the Commission shall serve without pay.

(k) Temporary services

The Commission may procure, subject to the availability of funds, temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5.

(l) Personnel details

Upon request of the Commission, and subject to the availability of funds, the head of any Federal agency may detail to the Commission on a reimbursable basis any of the personnel of

such agency to assist the Commission in carrying out its duties under this chapter.

(m) Administrative support services

The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request to carry out its duties under this chapter.

(Pub. L. 96-430, title II, § 203, Oct. 10, 1980, 94 Stat. 1847.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3701 of this title.

§ 3703. Report to Congress

On the first January 1 occurring after October 10, 1980, and on each subsequent January 1, the Commission shall submit to appropriate committees of the Congress a report which contains a detailed statement of the financial transactions of the Commission and the activities undertaken by the Commission during the previous year. The report shall contain such other appropriate information as the committees to whom the report is submitted may from time to time request.

(Pub. L. 96-430, title II, § 204, Oct. 10, 1980, 94 Stat. 1848.)

CHAPTER 51—ELEMENTARY AND SECONDARY EDUCATION BLOCK GRANT

SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

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¹So in original. Probably should be followed by "of subsection (a) of this section".

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SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

§ 3801. Declaration of policy

The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children, on the basis of entitlements calculated under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Further, the Congress recognizes the special educational needs of children of low-income families, and that concentrations of such children in local educational agencies adversely affect their ability to provide educational programs which will meet the needs of such children. The Congress also finds that Federal assistance for this purpose will be more effective if education officials, principals, teachers, and supporting personnel are freed from overly prescriptive regulations and administrative burdens which are not necessary for fiscal accountability and make no contribution to the instructional program.

(Pub. L. 97-35, title V, § 552, Aug. 13, 1981, 95 Stat. 464.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chap-

ter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

SHORT TITLE

Section 551 of subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35 provided that: "This subtitle [enacting this chapter; amending sections 2502, 2612a, and 2844 of this title; repealing sections 1101 to 1107a, 1119a, 2601 to 2612, 2613, 2614, 2881 to 2890, 2901 to 2904, 2911, 2912, 2921, 2922, 2941 to 2943, 2951 to 2954, 2961 to 2963, 2971, 2981 to 2986, 2991, 2992, 3001 to 3003, 3011 to 3018, 3021 to 3024, 3031 to 3034, 3041, 3051 to 3057, 3061, 3062, 3063 to 3065, 3081 to 3086, 3101, 3102, 3111, 3112, 3121 to 3123, 3141 to 3150, 3161 to 3164, 3171, 3191 to 3207, 3281 to 3295, 3311 to 3318, 3331, 3332, 3351 to 3354, and 3361 to 3367 of this title, sections 1001 to 1007 of Title 21, Food and Drugs, and sections 9861 to 9868 of Title 42, The Public Health and Welfare; and repealing provisions set out as notes under sections 2801 and 3081 of this title, section 1001 of Title 21, and sections 9801 and 9861 of Title 42] may be cited as the 'Education Consolidation and Improvement Act of 1981'."

§ 3802. Duration of assistance

During the period beginning October 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this chapter, make payments to State educational agencies for grants made on the basis of entitlements created under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.] and calculated in accordance with provisions of that title in effect on September 30, 1982.

(Pub. L. 97-35, title V, § 553, Aug. 13, 1981, 95 Stat. 464.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this subtitle", meaning subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, known as the Education Consolidation and Improvement Act of 1981, which is classified principally to this chapter (§ 3801 et seq.). For complete classification of subtitle D to the Code, see Short Title note set out under section 3801 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Section 514 of Pub. L. 97-35 provided that:

"(a)(1) The total amount of appropriations to carry out chapter 1 of the Education Consolidation and Improvement Act of 1981 [this subchapter] shall not exceed \$3,480,000,000 for each of the fiscal years 1983 and 1984.

"(2) From the amount appropriated in accordance with the paragraph (1), not more than 14.6 percent of such amount for each of the fiscal years 1983 and 1984 shall be available to carry out programs described in sections 141, 146, and 151 of the Elementary and Secondary Education Act of 1965 [sections 2761, 2771, and 2181 of this title]. After the requirement of the preceding sentence is met, the Secretary of Education shall assure that the amount available for the pro-

grams described in section 117 of the Elementary and Secondary Education Act of 1965 [section 2722 of this title] bears the same ratio to the amount appropriated in each such fiscal year for chapter 1 of the Education Consolidation and Improvement Act of 1981 [this subchapter] as the amount available for such section 117 in fiscal year 1980 bore to the total amount appropriated for title I of the Elementary and Secondary Education Act of 1965 [section 2701 et seq. of this title] in fiscal year 1980.

"(b)(1) The total amount of appropriations to carry out chapter 2 of the Education Consolidation and Improvement Act of 1981 [subchapter II of this chapter] shall not exceed \$589,368,000 for each of the fiscal years 1982, 1983, and 1984.

"(2)(A) Funds appropriated in an appropriation Act for fiscal year 1982 for any program described in section 561(a)(1), (2), (3), (5), and (6) of this Act [section 3811(a)(1), (2), (3), (5), and (6) of this title] which are intended for use by a State or local educational agency in the school year 1982-1983 shall remain available to such agency but shall be expended and used in accordance with chapter 2 of the Education Consolidation and Improvement Act of 1981 [subchapter II of this chapter].

"(B) Funds appropriated in an appropriation Act for fiscal year 1981 for any program described in section 561(a)(1), (2), (3), (5), and (6) of this Act [section 3811(a)(1), (2), (3), (5), and (6) of this title] which are not obligated by a State or local educational agency prior to July 1, 1982, shall remain available to such agency but shall be expended and used in accordance with chapter 2 of the Education Consolidation and Improvement Act of 1981 [subchapter II of this chapter]."

§ 3803. Applicability of title I provisions of law

(a) Program eligibility

Except as otherwise provided in this chapter, the Secretary shall make payments based upon the amount of, and eligibility for, grants as determined under the following provisions of title I of the Elementary and Secondary Education Act [20 U.S.C. 2701 et seq.] in effect on September 30, 1982:

(1) Part A—"Programs Operated by Local Education Agencies" [20 U.S.C. 2711 et seq.]:

(A) Subpart 1—"Basic Grants" [20 U.S.C. 2711 et seq.]; and

(B) Subpart 2—"Special Grants" [20 U.S.C. 2721 et seq.].

(2) Part B—"Programs Operated by State Agencies" [20 U.S.C. 2761 et seq.]:

(A) Subpart 1—"Programs for Migratory Children" [20 U.S.C. 2761 et seq.];

(B) Subpart 2—"Programs for Handicapped Children" [20 U.S.C. 2771 et seq.];

(C) Subpart 3—"Programs for Neglected and Delinquent Children" [20 U.S.C. 2781 et seq.]; and

(D) Subpart 4—"General Provisions for State Operated Programs" [20 U.S.C. 2791 et seq.].

(b) Administrative provisions

The Secretary, in making the payments and determinations specified in subsection (a) of this section, shall continue to use the following provisions of title I of the Elementary and Secondary Education Act [20 U.S.C. 2701 et seq.] as in effect on September 30, 1982:

(1) Part E—"Payments" [20 U.S.C. 2841 et seq.]:

(A) Section 191—"Payment Methods" [20 U.S.C. 2841];

(B) Section 192—"Amount of Payments to Local Educational Agencies" [20 U.S.C. 2842];

(C) Section 193—"Adjustments Where Necessitated by Appropriations" [20 U.S.C. 2843]; and

(D) Section 194—"Payments for State Administration" [20 U.S.C. 2844], subject to subsection (d) of this section.

(2) Part F—"General Provisions" [20 U.S.C. 2851 et seq.];

(A) Section 197—"Limitation on Grants to Puerto Rico" [20 U.S.C. 2853]; and

(B) Section 198—"Definitions" [20 U.S.C. 2854] and conforming amendments to other Acts, except that only those definitions applicable to this chapter shall be used.

(c) Applicability rule

The provisions of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.] which are not specifically made applicable by this subchapter shall not be applicable to programs authorized under this subchapter.

(Pub. L. 97-35, title V, § 554(a)-(c), Aug. 13, 1981, 95 Stat. 464.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. Parts A, B, E, and F of title I of the 1965 Act are classified generally to parts A (§ 2711 et seq.), B (§ 2761 et seq.), E (§ 2841 et seq.), and F (§ 2851 et seq.), respectively, of subchapter I of chapter 47 of this title. Subparts 1 and 2 of part A of title I of the 1965 Act are classified generally to subparts 1 (§ 2711 et seq.) and 2 (§ 2721 et seq.), respectively, of part A of subchapter I of chapter 47 of this title. Subparts 1 to 4 of part B of title I of the 1965 Act are classified generally to subparts 1 (§ 2761 et seq.), 2 (§ 2771 et seq.), 3 (§ 2781 et seq.), and 4 (§ 2791 et seq.), respectively, of part B of subchapter I of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsection (d) of this section, referred to in subsec. (b)(1)(D), is subsec. (d) of section 554 of Pub. L. 97-35, which amended section 2844 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3804, 3875 of this title.

§ 3804. Authorized programs

(a) General

Each State and local educational agency shall use the payments under this subchapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.

(b) Program design

State Agency programs shall be designed to serve those categories of children counted for

eligibility for grants under section 3803(a)(2) of this title in accordance with the requirements of this subchapter.

(c) Program description

A local education agency may use funds received under this subchapter only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 3805(b)(2) of this title, and which are included in an application for assistance approved by the State educational agency. Such programs and projects may include the acquisition of equipment and instructional materials, employment of special instructional and counseling and guidance personnel, employment and training of teacher aides, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, the construction, where necessary, of school facilities, other expenditures authorized under title I of the Elementary and Secondary Education Act [20 U.S.C. 2701 et seq.] as in effect September 30, 1982, and planning for such programs and projects.

(d) Records and information

Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this subchapter).

(Pub. L. 97-35, title V, § 555, Aug. 13, 1981, 95 Stat. 465.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3806 of this title.

§ 3805. Approval of applications

(a) Application by local educational agency

A local educational agency may receive a grant under this subchapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years, and such application has been approved by the State educational agency.

(b) Application assurances

The application described in subsection (a) of this section shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information

to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this subchapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children;

(B) are located in all attendance areas of an agency which has a uniformly high concentration of such children; or

(C) are designed to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency;

(2) are based upon an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas, permits selection of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

(3) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served and are designed and implemented in consultation with parents and teachers of such children;

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year; and

(5) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 3806 of this title.

(Pub. L. 97-35, title V, § 556, Aug. 13, 1981, 95 Stat. 465.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3804, 3806 of this title.

§ 3806. Participation of children enrolled in private schools

(a) General requirements

To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 3804(c), 3805(b)(2), (3), and (4), and 3807(b) of this title. Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

(b) Bypass provision

(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a) of this section, the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a) of this section.

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a) of this section, he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a) of this section, upon which determination the provisions of subsection (a) of this section shall be waived.

(3)(A) When the Secretary arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this subchapter.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a) of this section.

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take

further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Existing bypass provision

Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.] prior to August 13, 1981, shall remain in effect to the extent consistent with the purposes of this subchapter.

(Pub. L. 97-35, title V, § 557, Aug. 13, 1981, 95 Stat. 466.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3805 of this title.

§ 3807. General provisions

(a) Maintenance of effort

(1) Except as provided in paragraph (2), a local educational agency may receive funds under this subchapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this subchapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by failing below 90 per centum of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The State educational agency may waive, for one fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circum-

stances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

(b) Federal funds to supplement, not supplant regular non-Federal funds

A local educational agency may use funds received under this subchapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this subchapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection a local education agency shall not be required to provide services under this subchapter outside the regular classroom or school program.

(c) Comparability of services

(1) A local educational agency may receive funds under this subchapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this subchapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2) A local educational agency shall be deemed to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established—

(A) a districtwide salary schedule;

(B) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

(d) Exclusion of special State and local program funds

For the purposes of determining compliance with the requirements of subsections (b) and (c) of this section, a local educational agency may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, if such programs are consistent with the purposes of this subchapter.

(e) Allocation of funds in certain States

In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency is authorized to make allocations of basic grants and special incentive grants directly to local education-

al agencies without regard to counties, if such allocations were made during fiscal year 1982, except that (1) precisely the same factors are used to determine the amount of such grants to counties, and (2) a local educational agency dissatisfied with such determination is afforded an opportunity for a hearing on the matter by the State educational agency.

(Pub. L. 97-35, title V, § 558, Aug. 13, 1981, 95 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3806 of this title.

SUBCHAPTER II—CONSOLIDATION OF FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION

§ 3811. Statement of purpose

- (a) Consolidation of program authorizations; financial assistance to State and local educational agencies

It is the purpose of this subchapter to consolidate the program authorizations contained in—

- (1) titles II, III, IV, V, VI, VIII, and IX [20 U.S.C. 2881 et seq., 2941 et seq., 3081 et seq., 3141 et seq., 3191 et seq., 3281 et seq., 3311 et seq.] (except part C [20 U.S.C. 3341 et seq.]) of the Elementary and Secondary Education Act of 1965;
- (2) the Alcohol and Drug Abuse Education Act [21 U.S.C. 1001 et seq.];
- (3) part A and section 532 of title V of the Higher Education Act of 1965 [20 U.S.C. 1101 et seq. and 1119a];
- (4) the Follow Through Act [42 U.S.C. 9861 et seq.] (on a phased basis);
- (5) section 3(a)(1) of the National Science Foundation Act of 1950 [42 U.S.C. 1862(a)(1)] relating to precollege science teacher training; and
- (6) the Career Education Incentive Act [20 U.S.C. 2601 et seq.];

into a single authorization of grants to States for the same purposes set forth in the provisions of law specified in this sentence, but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by such agencies. It is the further purpose and intent of Congress to financially assist State and local educational agencies to improve elementary and secondary education (including preschool education) for children attending both public and private schools, and to do so in a manner designed to greatly reduce the enormous administrative and paperwork burden imposed on schools at the expense of their ability to educate children.

- (b) Responsibility for administration of funds

The basic responsibility for the administration of funds made available under this subchapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the subchapter shall be mainly that of

local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents.

(Pub. L. 97-35, title V, § 561, Aug. 13, 1981, 95 Stat. 469.)

REFERENCES IN TEXT

This subchapter, referred to in text, read in the original, "this chapter", meaning chapter 2 [§ 561 to 587] of subtitle D of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 469, which enacted this subchapter, amended sections 2502 and 2612a of this title, repealed sections 1101 to 1107a, 1119a, 2601 to 2612, 2613, 2614, 2881 to 2890, 2901 to 2904, 2911, 2912, 2921, 2922, 2941 to 2943, 2951 to 2954, 2961 to 2963, 2971, 2981 to 2986, 2991, 2992, 3001 to 3003, 3011 to 3018, 3021 to 3024, 3031 to 3034, 3041, 3051 to 3057, 3061, 3082, 3063 to 3065, 3081 to 3086, 3101, 3102, 3111, 3112, 3121 to 3123, 3141 to 3150, 3161 to 3164, 3171, 3191 to 3207, 3281 to 3295, 3311 to 3318, 3331, 3332, 3351 to 3354, 3361 to 3367 of this title, sections 1001 to 1007 of Title 21, Food and Drugs, and sections 9861 to 9868 of Title 42, The Public Health and Welfare, and repealed provisions set out as notes under sections 2601 and 3081 of this title, section 1001 of Title 21, and sections 9801 and 9861 of Title 42. For complete classification of chapter 2 to the Code, see Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Titles II, III, V, VI, VIII, and IX of the 1965 Act, which were formerly classified to subchapters I (§ 821 et seq.), II (§ 841 et seq.), III (§ 861 et seq.), IV (§ 871 et seq.), V (§ 881 et seq.), and VI (§ 900 et seq.), respectively, of chapter 24 of this title, were classified generally to subchapters II (§ 2881 et seq.), III (§ 2941 et seq.), V (§ 3141 et seq.), VI (§ 3191 et seq.), VIII (§ 3281 et seq.), and IX (§ 3311 et seq.), respectively, of chapter 47 of this title prior to their repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Title IV of the 1965 Act, which was formerly classified to subchapter I (§ 1801 et seq.) of chapter 40 of this title, was classified generally to subchapter IV (§ 3081 et seq.) of chapter 47 of this title prior to its repeal by section 587(a)(1) of Pub. L. 97-35. Part C of title IX of the 1965 Act is classified generally to part C (§ 3341 et seq.) of subchapter IX of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Alcohol and Drug Abuse Education Act, referred to in subsec. (a)(2), is Pub. L. 91-527, Dec. 3, 1970, 84 Stat. 1385, as amended, which was classified generally to chapter 14 (§ 1001 et seq.) of Title 21, Food and Drugs, prior to its repeal by Pub. L. 97-35, title V, § 587(a)(3), Aug. 13, 1981, 95 Stat. 480.

The Higher Education Act of 1965, referred to in subsec. (a)(3), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part A and section 532 of title V of the Higher Education Act of 1965 were classified generally to part A (§ 1101 et seq.) of subchapter V of chapter 28 of this title and section 1119a of this title, respectively, prior to their repeal by Pub. L. 97-35, title V, § 587(a)(2), Aug. 13, 1981, 95 Stat. 480. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Follow Through Act, referred to in subsec. (a)(4), is subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 508, as amended, which is classified generally to subchapter III (§ 9861 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The Career Education Incentive Act, referred to in subsec. (a)(6), is Pub. L. 95-207, Dec. 13, 1977, 91 Stat. 1464, as amended, which was classified principally to chapter 46 (§2601 et seq.) of this title prior to its repeal by Pub. L. 97-35, title V, §587(a)(4), Aug. 13, 1981, 95 Stat. 480.

§ 3812. Appropriations

(a) Authorization

There are authorized to be appropriated such sums as may be necessary for fiscal year 1982 and each of the five succeeding fiscal years to carry out the provisions of this subchapter.

(b) Duration of payments to States

During the period beginning July 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this chapter, make payments to State educational agencies for the purposes of this subchapter.

(c) Availability of previously authorized funds

Funds available under previously authorized programs shall be available for the purpose of such payments in accordance with section 514(b)(2) of the Omnibus Education Reconciliation Act of 1981.

(Pub. L. 97-35, title V, § 562, Aug. 13, 1981, 95 Stat. 469.)

REFERENCES IN TEXT

Section 514(b)(2) of the Omnibus Education Reconciliation Act of 1981, referred to in subsec. (c), is section 514(b)(2) of Pub. L. 97-35, title V, Aug. 13, 1981, 95 Stat. 445, which is set out as a note under section 3802 of this title.

§ 3813. Allotment to States

(a) Formula

From the sums appropriated to carry out this subchapter in any fiscal year, the Secretary shall reserve not to exceed 1 per centum for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Secretary shall reserve an additional amount, not to exceed 6 per centum of the sums appropriated, to carry out the purposes of section 3851 of this title. From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to 0.5 per centum of such remainder.

(b) "School-age population" and "States" defined

For the purposes of this section:

(1) The term "school-age population" means the population aged five through seventeen.

(2) The term "States" includes the fifty States, the District of Columbia, and Puerto Rico.

(Pub. L. 97-35, title V, § 563, Aug. 13, 1981, 95 Stat. 470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3815, 3851 of this title.

§ 3814. State applications

(a) Contents

Any State which desires to receive grants under this subchapter shall file an application with the Secretary which—

(1) designates the State educational agency as the State agency responsible for the administration and supervision of programs assisted under this subchapter;

(2) provides for a process of active and continuing consultation with the State educational agency of an advisory committee, appointed by the Governor and determined by the Governor to be broadly representative of the educational interests and the general public in the State, including persons representative of—

(A) public and private elementary and secondary schoolchildren;

(B) classroom teachers;

(C) parents of elementary and secondary schoolchildren;

(D) local boards of education;

(E) local and regional school administrators (including principals and superintendents);

(F) institutions of higher education; and

(G) the State legislature;

to advise the State educational agency on the allocation among authorized functions of funds (not to exceed 20 per centum of the amount of the State's allotment) reserved for State use under section 3815(a) of this title, on the formula for the allocation of funds to local educational agencies, and on the planning, development, support, implementation, and evaluation of State programs assisted under this subchapter;

(3) sets forth the planned allocation of funds reserved for State use under section 3815(a) of this title among parts A, B, and C of this subchapter and among the authorized programs and projects which are to be implemented, and the allocation of such funds required to implement section 3862 of this title, including administrative costs of carrying out the responsibilities of the State educational agency under this subchapter;

(4) provides for timely public notice and public dissemination of the information provided pursuant to paragraphs (2) and (3);

(5) beginning with fiscal year 1984, provides for an annual evaluation of the effectiveness of programs assisted under this subchapter, which shall include comments of the advisory committee, and shall be made available to the public; and

(6) provides that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this subchapter); and

(7) contains assurances that there is compliance with the specific requirements of this subchapter.

(b) Period of filing; annual amendment

An application filed by the State under subsection (a) of this section shall be for a period not to exceed three fiscal years, and may be amended annually as may be necessary to reflect changes without filing a new application.

(Pub. L. 97-35, title V, § 564, Aug. 13, 1981, 95 Stat. 470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3815, 3831, 3841 of this title.

§ 3815. Allocation to local educational agencies**(a) Priorities**

From the sum made available each year under section 3813 of this title, the State educational agency shall distribute not less than 80 per centum to local educational agencies within such State according to the relative enrollments in public and nonpublic schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

- (1) children from low-income families,
- (2) children living in economically depressed urban and rural areas, and
- (3) children living in sparsely populated areas.

(b) Criteria suggested by State educational agency

The Secretary shall approve criteria suggested by the State educational agency for adjusting allocations under subsection (a) of this section if such criteria are reasonably calculated to produce an equitable distribution of funds with reference to the factors set forth in subsection (a) of this section.

(c) Distribution of funds

From the funds paid to it pursuant to sections 3813 and 3814 of this title during each fiscal year, the State educational agency shall distribute to each local educational agency which has submitted an application as required in section 3816 of this title the amount of its allocation as determined under subsection (a) of this section.

(Pub. L. 97-35, title V, § 565, Aug. 13, 1981, 95 Stat. 471.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3814, 3823, 3862 of this title.

§ 3816. Local applications**(a) Contents**

A local educational agency may receive its allocation of funds under this subchapter for any year in which it has on file with the State educational agency an application which—

- (1) sets forth the planned allocation of funds among parts A, B, and C of this subchapter and for the programs authorized by such parts which it intends to support, including the allocation of such funds required to implement section 3862 of this title;

(2) provides assurances of compliance with provisions of this subchapter relating to such programs, including the participation of children enrolled in private, nonprofit schools in accordance with section 3862 of this title;

(3) agrees to keep such records, and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this subchapter; and

(4) in the allocation of funds for programs authorized by this subchapter, and in the design, planning, and implementation of such programs, provides for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, with teachers and administrative personnel in such schools, and with other groups as may be deemed appropriate by the local educational agency.

(b) Duration

An application filed by a local educational agency under subsection (a) of this section shall be for a period not to exceed three fiscal years, may provide for the allocation of funds among programs and purposes authorized by this subchapter for a period of three years, and may be amended annually as may be necessary to reflect changes without filing a new application.

(c) Discretion in expenditure of funds

Each local educational agency shall have complete discretion, subject only to the provisions of this subchapter, in determining how funds the agency receives under this section shall be divided among the purposes of this subchapter in accordance with the application submitted under this section.

(Pub. L. 97-35, title V, § 566, Aug. 13, 1981, 95 Stat. 471.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3815, 3831, 3841 of this title.

PART A—BASIC SKILLS DEVELOPMENT**PART REFERRED TO IN OTHER SECTIONS**

This part is referred to in sections 3814, 3816, 3842 of this title.

§ 3821. Use of funds

Funds allocated for use under this part shall be used by State and local educational agencies to develop and implement a comprehensive and coordinated program designed to improve elementary and secondary school instruction in the basic skills of reading, mathematics, and written and oral communication, as formerly authorized by title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2881 et seq.], relating to basic skills improvement, including the special mathematics program as formerly authorized by section 232 of such title [20 U.S.C. 2912].

(Pub. L. 97-35, title V, § 571, Aug. 13, 1981, 95 Stat. 472.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title II of the 1965 Act, which was formerly classified to subchapter I (§ 821 et seq.) of chapter 24 of this title, and section 232 of such title, were classified generally to subchapter II (§ 2881 et seq.) of chapter 47 of this title and section 2912 of this title, respectively, prior to their repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 3822. State leadership and support services

(a) Grants and contracts by State educational agencies

In order to achieve the purposes of this part, State educational agencies may use funds reserved for State programs to make grants to and enter into contracts with local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions—

- (1) to carry out planning, research and development, demonstration projects, training of leadership personnel, short term and regular session teacher training institutes; and
- (2) for the development of instructional materials, the dissemination of information, and technical assistance to local educational agencies.

Each State educational agency may also use such funds for technical assistance and training for State boards of education.

(h) Parents and volunteers working for improvement of performance of children in basic skills

State educational agencies may support activities designed to enlist the assistance of parents and volunteers working with schools to improve the performance of children in the basic skills. Such activities may include—

- (1) the development and dissemination of materials that parents may use in the home to improve their children's performance in those skills; and
- (2) voluntary training activities for parents to encourage and assist them to help their children in developing basic skills;

except that such activities conducted in local areas shall be conducted with the approval of and in conjunction with programs of local educational agencies.

(Pub. L. 97-35, title V, § 572, Aug. 13, 1981, 95 Stat. 472.)

§ 3823. School level programs

(a) Contents

In planning for the utilization of funds it allocates for this subchapter (from its allotment under section 3815 of this title) a local educational agency shall provide for the participation of children enrolled in private elementary and secondary schools (and of teachers in such schools) in accordance with section 3862 of this title. Such plans shall be developed in conjunction with and involve continuing consultation with teachers and principals in such district.

Such planning shall include a systematic strategy for improving basic skills instruction for all children which provides for planning and implementation at the school building level, involving teachers, administrators, and (to the extent practicable) parents, and utilizing all available resources in a comprehensive program. The programs shall include—

- (1) diagnostic assessment to identify the needs of all children in the school;
- (2) the establishment of learning goals and objectives for children and for the school;
- (3) to the extent practicable, pre-service and in-service training and development programs for teachers, administrators, teacher aides and other support personnel, designed to improve instruction in the basic skills;
- (4) activities designed to enlist the support and participation of parents to aid in the instruction of their children; and
- (5) procedures for testing students and for evaluation of the effectiveness of programs for maintaining a continuity of effort for individual children.

(h) Learning centers, demonstration and training programs, and other activities

The programs described in subsection (a) of this section may include such areawide or districtwide activities as learning centers accessible to students and parents, demonstration and training programs for parents, and other activities designed to promote more effective instruction in the basic skills.

(Pub. L. 97-35, title V, § 573, Aug. 13, 1981, 95 Stat. 473.)

PART B—EDUCATIONAL IMPROVEMENT AND SUPPORT SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3814, 3816 of this title.

§ 3831. Statement of purpose

It is the purpose of this part to permit State and local educational agencies to use Federal funds (directly, and through grants to or contracts with educational agencies, local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions) to carry out selected activities from among the full range of programs and projects formerly authorized under title IV [20 U.S.C. 3081 et seq.], relating to educational improvement, resources, and support, title V [20 U.S.C. 3141 et seq.], relating to State leadership, title VI [20 U.S.C. 3191 et seq.], relating to emergency school aid, of the Elementary and Secondary Education Act of 1965, section 3(a)(1) of the National Science Foundation Act of 1950 [42 U.S.C. 1862(a)(1)], relating to precollege science teacher training, and part A and section 532 of title V of the Higher Education Act of 1965 [20 U.S.C. 1101 et seq. and 1119a], relating to the Teacher Corps and teacher centers, in accordance with the planned allocation of funds set forth in the applications under sections 3814 and 3816 of this

title, in conformity with the other requirements of this subchapter.

(Pub. L. 97-35, title V, § 576, Aug. 13, 1981, 95 Stat. 473.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Titles V and VI of the 1965 Act, which were formerly classified to subchapters III (§ 861 et seq.) and IV (§ 871 et seq.), respectively, of chapter 24 of this title, were classified generally to subchapters V (§ 3141 et seq.) and VI (§ 3191 et seq.), respectively, of chapter 47 of this title prior to their repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Title IV of the 1965 Act, which was formerly classified to subchapter I (§ 1801 et seq.) of chapter 40 of this title, was classified generally to subchapter IV (§ 3081 et seq.) of chapter 47 of this title prior to its repeal by section 587(a)(1) of Pub. L. 97-35. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Higher Education Act of 1965, referred to in text, is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part A and section 532 of title V of the Higher Education Act of 1965 were classified generally to part A (§ 1101 et seq.) of subchapter V of chapter 28 of this title and section 1119a of this title, respectively, prior to their repeal by Pub. L. 97-35, title V, § 587(a)(2), Aug. 13, 1981, 95 Stat. 480. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 3832. Authorized activities

Programs and projects authorized under this part include—

(1) the acquisition and utilization—

(A) of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools which shall be used for instructional purposes only, and

(B) of instructional equipment and materials suitable for use in providing education in academic subjects for use by children and teachers in elementary and secondary schools which shall be used for instructional purposes only,

which take into account the needs of children in both public and private schools based upon periodic consultation with teachers, librarians, media specialists, and private school officials;

(2) the development of programs designed to improve local educational practices in elementary and secondary schools, and particularly activities designed to address educational problems such as the education of children with special needs (educationally deprived children, gifted and talented children, including children in private schools);

(3) programs designed to assist local educational agencies, upon their request, to more effectively address educational problems caused by the isolation or concentration of minority group children in certain schools if such assistance is not conditioned upon any requirement that a local educational agency which assigns students to schools on the basis

of geographic attendance areas adopt any other method of student assignment, and that such assistance is not made available for the transportation of students or teachers or for the acquisition of equipment for such transportation;

(4) comprehensive guidance, counseling, and testing programs in elementary and secondary schools and State and local support services necessary for the effective implementation and evaluation of such programs (including those designed to help prepare students for employment);

(5) programs and projects to improve the planning, management and implementation of educational programs, including fiscal management, by both State and local educational agencies, and the cooperation of such agencies with other public agencies;

(6) programs and projects to assist in teacher training and in-service staff development, particularly to better prepare both new and in-service personnel to deal with contemporary teaching and learning requirements and to provide assistance in the teaching and learning of educationally deprived students; and

(7) programs and projects to assist local educational agencies to meet the needs of children in schools undergoing desegregation and to assist such agencies to develop and implement plans for desegregation in the schools of such agencies.

(Pub. L. 97-35, title V, § 577, Aug. 13, 1981, 95 Stat. 474.)

PART C—SPECIAL PROJECTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3814, 3816 of this title.

§ 3841. Statement of purpose

It is the purpose of this part to permit State and local educational agencies to use Federal funds (directly and through grants to or contracts with educational agencies, local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions) to carry out selected activities from among the full range of programs and projects formerly authorized under title III [20 U.S.C. 2941 et seq.], relating to special projects, title VIII [20 U.S.C. 3281 et seq.], relating to community schools, and title IX [20 U.S.C. 3311 et seq.] (except part C [20 U.S.C. 3341 et seq.]), relating to gifted and talented children, educational proficiency standards, safe schools program, and ethnic heritage program, of the Elementary and Secondary Education Act of 1965, the Career Education Incentive Act [20 U.S.C. 2601 et seq.], and part B of title V of the Economic Opportunity Act of 1964 [42 U.S.C. 2929 et seq.], relating to Follow Through programs, in accordance with the planned allocation of funds set forth in the applications under sections 3814 and 3816 of this title, in conformity with the other requirements of this subchapter.

(Pub. L. 97-35, title V, § 581, Aug. 13, 1981, 95 Stat. 475.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Titles III, VIII, and IX of the 1965 Act, which were formerly classified to subchapters II (§ 841 et seq.), V (§ 881 et seq.), and VI (§ 900 et seq.), respectively, of chapter 24 of this title, were classified generally to subchapters III (§ 2941 et seq.), VIII (§ 3261 et seq.), and IX (§ 3311 et seq.), respectively, of chapter 47 of this title prior to their repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Part C of title IX of the 1965 Act is classified generally to part C (§ 3341 et seq.) of subchapter IX of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Career Education Incentive Act, referred to in text, is Pub. L. 95-207, Dec. 13, 1977, 91 Stat. 1464, as amended, which was classified principally to chapter 46 (§ 2801 et seq.) of this title prior to its repeal by Pub. L. 97-35, title V, § 587(a)(4), Aug. 13, 1981, 95 Stat. 480.

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title V of the Economic Opportunity Act of 1964 is known as the Headstart-Follow Through Act. Part B of title V of the Economic Opportunity Act of 1964 was classified generally to part B (§ 2929 et seq.) of subchapter V of chapter 34 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

§ 3842. Authorized activities

Programs and projects authorized under this part include—

(1) special projects (as may be determined to be desirable by the State or local educational agencies) in such areas as—

(A) preparation of students to use metric weights and measurements when such use is needed;

(B) emphasis on the arts as an integral part of the curriculum;

(C)(i) in-school partnership programs in which the parents of school-age children participate to enhance the education and personal development of the children, previously authorized by part B of the Headstart-Follow Through Act [42 U.S.C. 2929 et seq.];

(ii) preschool partnership programs in which the schools work with parents of preschool children in cooperation with programs funded under the Headstart-Follow Through Act [42 U.S.C. 2921 et seq.];

(D) consumer education;

(E) preparation for employment, the relationship between basic academic skill development and work experience, and coordination with youth employment programs carried out under the Job Training Partnership Act [29 U.S.C. 1501 et seq.];

(F) career education previously authorized by the Career Education Incentive Act [20 U.S.C. 2601 et seq.];

(G) environmental education, health education, education about legal institutions and the American system of law and its un-

derlying principles, and studies on population and the effects of population changes;

(H) academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders;

(I) programs to introduce disadvantaged secondary school students to the possibilities of careers in the biomedical and medical sciences, and to encourage, motivate, and assist them in the pursuit of such careers; and

(J) programs to teach the principles of citizenship;

(2) the use of public education facilities as community centers operated by a local education agency in conjunction with other local governmental agencies and community organizations and groups to provide educational, recreational, health care, cultural, and other related community and human services for the community served in accordance with the needs, interests, and concerns of the community and the agreement and conditions of the governing board of the local educational agency; and

(3) additional programs, including—

(A) special programs to identify, encourage, and meet the special educational needs of children who give evidence of high performance capability in areas such as intellectual, creative, artistic, leadership capacity, or specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities;

(B) establishment of educational proficiency standards for reading, writing, mathematics, or other subjects, the administration of examinations to measure the proficiency of students, and implementation of programs (coordinated with those under part A of this subchapter) designed to assist students in achieving levels of proficiency compatible with established standards;

(C) programs designed to promote safety in the schools and to reduce the incidence of crime and vandalism in the school environment;

(D) planning, developing, and implementing ethnic heritage studies programs to provide all persons with an opportunity to learn about and appreciate the unique contributions to the American national heritage made by the various ethnic groups, and to enable students better to understand their own cultural heritage as well as the cultural heritage of others; and

(E) programs involving training and advisory services under title IV of the Civil Rights Act of 1964 [42 U.S.C. 2000c et seq.].

(Pub. L. 97-35, title V, § 582, Aug. 13, 1981, 95 Stat. 475; Pub. L. 97-300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 97-313, Oct. 14, 1982, 96 Stat. 1462.)

REFERENCES IN TEXT

The Headstart-Follow Through Act, referred to in par. (1)(C), is title V of Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 527, as amended, which was classified generally to subchapter V (§ 2921 et seq.) of chapter 34 of

Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Part B of the Headstart-Follow Through Act was classified generally to part B (§ 2929 et seq.) of subchapter V of chapter 34 of Title 42. For complete classification of this Act to the Code, see Tables.

The Job Training Partnership Act, referred to in par. (1)(E), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Carcer Education Incentive Act, referred to in par. (1)(F), is Pub. L. 95-207, Dec. 13, 1977, 91 Stat. 1464, as amended, which was classified principally to chapter 46 (§ 2601 et seq.) of this title prior to its repeal by Pub. L. 97-35, title V, § 587(a)(4), Aug. 13, 1981, 95 Stat. 480.

The Civil Rights Act of 1964, referred to in par. (3)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title IV of the Civil Rights Act of 1964 is classified generally to subchapter IV (§ 2000c et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

CODIFICATION

In par. (1)(E), "Job Training Partnership Act [29 U.S.C. 1501 et seq.]" was substituted for "Comprehensive Employment and Training Act [29 U.S.C. 801 et seq.]" pursuant to section 183 of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357, which is classified to section 1592 of Title 29, Labor, and which provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act.

AMENDMENTS

1982—Par. (1)(J), Pub. L. 97-313 added cl. (J).

PART D—SECRETARY'S DISCRETIONARY FUNDS

§ 3851. Discretionary program authorized

- (a) National source for information on effectiveness of programs; research and demonstrations; improvement of training of personnel; assistance in implementation of programs

From the sums reserved by the Secretary pursuant to the second sentence of section 3813(a) of this title the Secretary is authorized to carry out directly or through grants to or contracts with State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions, programs and projects which—

- (1) provide a national source for gathering and disseminating information on the effectiveness of programs designed to meet the special educational needs of educationally deprived children, and others served by this chapter, and for assessing the needs of such individuals, including programs and projects formerly authorized by section 376 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3041] and programs and projects formerly funded under the "National Diffusion Network" program;
- (2) carry out research and demonstrations related to the purposes of this chapter;
- (3) are designed to improve the training of teachers and other instructional personnel needed to carry out the purposes of this chapter; or

(4) are designed to assist State and local educational agencies in the implementation of programs under this chapter.

(b) Funding

From the funds reserved for the purposes of this section, the Secretary shall first fund—

(1) the Inexpensive Book Distribution Program (as carried out through "Reading is Fundamental") as formerly authorized by part C of title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2911 et seq.],

(2) the programs of national significance in the "Arts in Education" Program as formerly authorized by part C of title III of such Act [20 U.S.C. 2961 et seq.], and

(3) programs in alcohol and drug abuse education as formerly authorized by the Alcohol and Drug Abuse Education Act [21 U.S.C. 1001 et seq.],

at least in amounts necessary to sustain the activities described in this sentence at the level of operations during fiscal year 1981, and then utilize the remainder of such funds for the other authorized activities described in subsection (a) of this section.

(Pub. L. 97-35, title V, § 583, Aug. 13, 1981, 95 Stat. 476.)

REFERENCES IN TEXT

Section 376 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3041], referred to in subsec. (a)(1), was repealed by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(1) and (2), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Part C of title II of the 1965 Act was classified generally to part C (§ 2911 et seq.) of subchapter II of chapter 47 of this title prior to its repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Part C of title III of the 1965 Act was classified generally to part C (§ 2961 et seq.) of subchapter III of chapter 47 of this title prior to its repeal by section 587(a)(1) of Pub. L. 97-35. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Alcohol and Drug Abuse Education Act, referred to in subsec. (b)(3), is Pub. L. 91-527, Dec. 3, 1970, 84 Stat. 1385, as amended, which was classified generally to chapter 14 (§ 1001 et seq.) of Title 21, Food and Drugs prior to repeal by Pub. L. 97-35, title V, § 587(a)(3), Aug. 13, 1981, 95 Stat. 480.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3813 of this title.

PART E—GENERAL PROVISIONS

§ 3861. Funding requirements

(a) Maintenance of effort

(1) Except as provided in paragraph (2), a State is entitled to receive its full allocation of funds under this subchapter for any fiscal year if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year was not less than 90 per

centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The Secretary shall reduce the amount of the allocation of funds under this subchapter in any fiscal year in the exact proportion to which the State fails to meet the requirements of paragraph (1) by falling below 90 per centum of both the fiscal effort per student and aggregate expenditures (using the measure most favorable to the State), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The Secretary may waive, for one fiscal year only, the requirements of this subsection if he determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

(b) Federal funds to supplement regular non-Federal funds

A State or local educational agency may use and allocate funds received under this subchapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under this subchapter, be made available from non-Federal sources, and in no case may such funds be used so as to supplant funds from non-Federal sources.

(c) Issuance of regulations

The Secretary is specifically authorized to issue regulations to enforce the provisions of this section.

(Pub. L. 97-35, title V, § 585, Aug. 13, 1981, 95 Stat. 477.)

§ 3862. Participation of children enrolled in private schools

(a) Secular, neutral, and nonideological services, materials, and equipment

(1) To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this subchapter or which serves the area in which a program or project assisted under this subchapter is located who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded by the State educational agency from funds reserved for State use under section 3815 of this title, such agency after consultation with appropriate private school officials, shall provide for the benefit of such children in such schools secular, neutral, and nonideological services, materials, and equipment including the participation of the teachers of such children (and other educational personnel serving such children) in training programs, and the repair, minor remodeling, or construction of public facilities as may be necessary for their provision (consistent with subsection (c) of this section), or, if such service, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other

arrangements as will assure equitable participation of such children in the purposes and benefits of this subchapter.

(2) If no program or project is carried out under subsection (a)(1) of this section in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in that district are provided with services and materials to the extent that would have occurred if the local educational agency had received funds under this subchapter.

(3) The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs and projects carried out under this subchapter by a State or local educational agency, whether directly or through grants to or contracts with other public or private agencies, institutions, or organizations.

(b) Equal expenditures

Expenditures for programs pursuant to subsection (a) of this section shall be equal (consistent with the number of children to be served) to expenditures for programs under this subchapter for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures, and when funds available to a local educational agency under this subchapter are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs or projects.

(c) Control of funds; provision of services

(1) The control of funds provided under this subchapter and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this subchapter, and a public agency shall administer such funds and property.

(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which, in the provision of such services, is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this subchapter shall not be commingled with State or local funds.

(d) Waiver due to State law; separate arrangements made by Secretary

If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation in programs of children enrolled in private elementary and second-

ary schools, as required by this section, the Secretary shall waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

(e) Noncompliance; provision for services; withholding of allocated amounts

(1) If the Secretary determines that a State or a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, he may waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d) of this section, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimated would be necessary to pay the cost of those services.

(f) Duration of determination

Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b) of this section.

(g) Payment for services

When the Secretary arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this subchapter.

(h) Notice of final action; opportunity to object; judicial review

(1) The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why that action should not be taken.

(2) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1) of this subsection, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based this action, as provided in section 2112 of title 28.

(3) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown,

may remand the case to the Secretary to take further evidence and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(i) Existing bypass provision

Any bypass determination by the Secretary under titles II through VI and VIII and IX of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2881 et seq., 2941 et seq., 3081 et seq., 3141 et seq., 3191 et seq., 3281 et seq., 3311 et seq.] prior to August 13, 1981, shall remain in effect to the extent consistent with the purposes of this subchapter.

(Pub. L. 97-35, title V, § 586, Aug. 13, 1981, 95 Stat. 477.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (i), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Titles II, III, V, VI, and VIII of the 1965 Act, which were formerly classified to subchapters I (§ 821 et seq.), II (§ 841 et seq.), III (§ 861 et seq.), IV (§ 871 et seq.), and V (§ 881 et seq.), respectively, of chapter 24 of this title, were classified generally to subchapters II (§ 2881 et seq.), III (§ 2941 et seq.), V (§ 3141 et seq.), VI (§ 3191 et seq.), and VIII (§ 3281 et seq.), respectively, of chapter 47 of this title prior to their repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Title IV of the 1965 Act, which was formerly classified to subchapter I (§ 1801 et seq.) of chapter 40 of this title, was classified generally to subchapter IV (§ 3981 et seq.) of chapter 47 of this title prior to its repeal by section 587(a)(1) of Pub. L. 97-35. Title IX of the 1965 Act, which was formerly classified to subchapter VI (§ 900 et seq.) of chapter 24 of this title, was classified generally to subchapter IX (§ 3311 et seq.) of chapter 47 of this title prior to its repeal, except for Part C thereof, by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3814, 3816, 3823 of this title.

§ 3863. Repeal of existing programs

(a) Effective October 1, 1982

Effective October 1, 1982, the provisions of—

(1) titles II, III, IV, V, VI, VIII, and IX [20 U.S.C. 2881 et seq., 2941 et seq., 3081 et seq., 3141 et seq., 3191 et seq., 3281 et seq., 3311 et seq.] (except part C [20 U.S.C. 3341 et seq.]) of the Elementary and Secondary Education Act of 1965;

(2) part A and section 532 of title V of the Higher Education Act of 1965 [20 U.S.C. 1101 et seq. and 1119a];

(3) the Alcohol and Drug Abuse Education Act [21 U.S.C. 1001 et seq.]; and

(4) the Career Education Incentive Act [20 U.S.C. 2601 et seq.];

are repealed.

(b) Effective October 1, 1984

Effective October 1, 1984, subchapter C of chapter 8 of subtitle A of title VI of this Act [42 U.S.C. 9861 et seq.], relating to Follow-Through programs is repealed.

(Pub. L. 97-35, title V, § 587, Aug. 13, 1981, 95 Stat. 480.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Titles II, III, V, VI, VIII, and IX of the 1965 Act, which were formerly classified to subchapters I (§ 821 et seq.), II (§ 841 et seq.), III (§ 861 et seq.), IV (§ 871 et seq.), V (§ 881 et seq.), and VI (§ 900 et seq.), respectively, of chapter 24 of this title, were classified generally to subchapters II (§ 2881 et seq.), III (§ 2941 et seq.), V (§ 3141 et seq.), VI (§ 3191 et seq.), VIII (§ 3281 et seq.), and IX (§ 3311 et seq.), respectively, of chapter 47 of this title prior to repeal. Title IV of the 1965 Act, which was formerly classified to subchapter I (§ 1801 et seq.) of chapter 40 of this title, was classified generally to subchapter IV (§ 3081 et seq.) of chapter 47 of this title prior to repeal. Part C of title IX of the 1965 Act is classified generally to part C (§ 3341 et seq.) of subchapter IX of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (a)(2), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part A and section 532 of title V of the Higher Education Act of 1965 were classified generally to part A (§ 1101 et seq.) of subchapter V of chapter 28 of this title and section 1119a of this title, respectively, prior to repeal. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Alcohol and Drug Abuse Education Act, referred to in subsec. (a)(3), is Pub. L. 91-527, Dec. 3, 1970, 84 Stat. 1385, as amended, which was classified generally to chapter 14 (§ 1001 et seq.) of Title 21, Food and Drugs prior to repeal.

The Career Education Incentive Act, referred to in subsec. (a)(4), is Pub. L. 95-207, Dec. 13, 1977, 91 Stat. 1464, as amended, which is classified principally to chapter 46 (§ 2601 et seq.) of this title prior to repeal.

This Act, referred to in subsec. (b), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357, known as the Omnibus Budget Reconciliation Act of 1981. Subchapter C [§§ 661 to 670] of chapter 8 of subtitle A of title VI of this Act is known as the Follow Through Act and is classified generally to subchapter III (§ 9861 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act and subchapter C to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

SUBCHAPTER III—GENERAL PROVISIONS

§ 3871. Federal regulations

(a) Promulgation by Secretary; covered matters

The Secretary is authorized to issue regulations—

(1) relating to the discharge of duties specifically assigned to the Secretary under this chapter;

(2) relating to proper fiscal accounting for funds appropriated under this subtitle and

the method of making payments authorized under this chapter; and

(3) which are deemed necessary to reasonably insure that there is compliance with the specific requirements and assurances required by this chapter.

(b) Technical assistance, information, suggested guidelines for noncovered matters

In all other matters relating to the details of planning, developing, implementing, and evaluating programs and projects by State and local educational agencies the Secretary shall not issue regulations, but may consult with appropriate State, local, and private educational agencies and, upon request, provide technical assistance, information, and suggested guidelines designed to promote the development and implementation of effective instructional programs and to otherwise assist in carrying out the purposes of this chapter.

(c) Judicial review precluded

Regulations issued pursuant to this chapter shall not have the standing of a Federal statute for the purposes of judicial review.

(Pub. L. 97-35, title V, § 591, Aug. 13, 1981, 95 Stat. 480.)

§ 3872. Withholding of payments

(a) Whenever the Secretary after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this chapter the Secretary shall notify such agency of these findings and that beginning sixty days after the date of such notification, further payments will not be made to the State under this chapter; or affected subchapter thereof (or, in his discretion, that the State educational agency shall reduce or terminate further payments under the chapter or affected subchapter thereof, to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under the chapter or affected subchapter thereof, or (2) payments by the State educational agency under the chapter or affected subchapter thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be.

Upon submission to a State of a notice under subsection (a) of this section that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring his action to the attention of the public within the State.

(Pub. L. 97-35, title V, § 592, Aug. 13, 1981, 95 Stat. 480.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3873 of this title.

§ 3873. Judicial review**(a) Filing of appeal; jurisdiction, venue, etc.**

If any State is dissatisfied with the Secretary's action under section 3872(a) of this title, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(b) Presumption applicable; remand

A State educational agency shall be presumed to have complied with this chapter, but the findings of fact by the Secretary, if supported by the weight of evidence, may overcome such presumption. The court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings.

(c) Relief; review in Supreme Court

Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 97-35, title V, § 593, Aug. 13, 1981, 95 Stat. 481.)

§ 3874. Availability of appropriations

Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this chapter shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the succeeding fiscal year.

(Pub. L. 97-35, title V, § 594, Aug. 13, 1981, 95 Stat. 481.)

§ 3875. Definitions

(a) Except as otherwise provided herein as used in this chapter—

(1) the term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands;

(2) the term "Secretary" means the Secretary of Education;

(3) the term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools;

(4) the term "local educational agency" means a public board of education or other

public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

(5) the term "parent" includes a legal guardian or other person standing in loco parentis;

(6) the term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade twelve;

(7) the term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade twelve;

(8) the term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities;

(9) the term "equipment" includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and

(10) the term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(b) Any term used in provisions referenced by section 3803 of this title and not defined in this section shall have the same meaning as that term was given in title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.] in effect prior to October 1, 1981.

(Pub. L. 97-35, title V, § 595, Aug. 13, 1981, 95 Stat. 481.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 3876. Application of other laws**(a) State Educational Agency Monitoring and Agency Application provisions**

Sections 1232c, 1232d, and 1232e of this title (relating to "State Educational Agency Moni-

toring and Agency Application") shall not apply to programs authorized under this chapter except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds), and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.

(b) Appropriations provisions

Section 1225 of this title shall apply to any funds appropriated for any fiscal year pursuant to this chapter.

(Pub. L. 97-35, title V, § 596, Aug. 13, 1981, 95 Stat. 482.)